

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 7, 1994

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Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 93-251, Proposed Affiliate Transaction
Rules

Dear Ms. Searcy:

Please find enclosed for filing an original plus eleven copies of the REPLY COMMENTS of THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ellen S. Levine", followed by the text "FOR".

Ellen S. Levine
Attorney for California

ESL:ldk

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)

)
Amendment of Parts 32 and 64 of the)
Commission's Rules to Account for)
Transactions between Carriers and)
Their Nonregulated Affiliates)
_____)

CC Docket No. 93-251

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REPLY COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION

The People of the State of California and the Public Utilities Commission of the State of California ("CPUC") respectfully submit their reply comments on the Notice of Proposed Rulemaking ("NPRM") in the above captioned docket. The CPUC supports adoption of the additional proposed rules. The CPUC agrees that the proposed rule changes will enhance the Federal Communications Commission's ("FCC") ability to ensure that carriers do not impose the costs of nonregulated activities on interstate ratepayers, and to ensure that ratepayers are not harmed by carrier imprudence.

As the FCC has recognized, affiliated transactions carry the potential for being at less than arm's length. Marketplace competition cannot prevent all possible improper cross-subsidization between a carrier and its non-regulated affiliates. The rule changes proposed by the FCC are designed to ensure that

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fair competition takes place so that all competitors are on a level playing field, and that ratepayers are not required to subsidize the non-regulated activities of its affiliates.

With respect to asset transfers, the FCC adopted two sets of valuation methods for affiliate transactions that are neither tariffed nor subject to prevailing company prices. The FCC required carriers to record asset transfers meeting those criteria at the higher of net book cost and estimated fair market value when carriers are sellers, and at the lower of net book cost and estimated fair market value when carriers are purchasers. However, the FCC required carriers to record all non-tariffed services other than those having prevailing company prices at the providers' fully distributed costs.

The NPRM proposes to require similar rules governing all non-tariffed affiliate transactions. Specifically, the FCC proposes that carriers record all non-tariffed affiliate transactions for which the FCC does not permit prevailing company pricing at the higher of cost and estimated fair market value when the carrier is the seller, and at the lower of cost and estimated fair market value when the carrier is the purchaser.

The CPUC has adopted affiliate transaction rules following a similar valuation method to avoid improper cross-subsidization between a carrier and its affiliates for over six years. Specifically, the CPUC rules require Pacific Bell to charge its affiliates the higher of fully distributed cost plus 10% or fair market value for non-tariffed services. Pacific Bell performs market price studies for non-tariffed services with aggregate annual billings to affiliates over \$100,000.

These rules have safeguarded ratepayers' interests against improperly cross-subsidizing transactions between a carrier and its affiliates without creating an undue burden for the regulated carrier. The CPUC believes that such rules are equally workable and desirable at the federal level.

In addition, the CPUC responds to the following specific elements of the FCC's proposal.

Chain Transactions

The CPUC agrees that tracing affiliate group costs is necessary to protect ratepayers against cross-subsidization. Both methods proposed by NPRM to trace affiliate group costs do not appear to be unnecessarily burdensome. Requiring carriers either to calculate the costs of resources obtained from other affiliates in accordance with the valuation methods proposed in the NPRM or valuing all resources used in affiliate transactions at their original cost to the affiliate group appear reasonable.

75 Percent Test - Prevailing Company Pricing

The proposed rule to restrict prevailing company pricing to affiliate transactions in which the nonregulated affiliate sells at least 75 percent of its output to non-affiliates is reasonable. The NPRM proposes two methods for measuring a nonregulated affiliate's output. The CPUC supports the method which requires carriers to measure output using the nonregulated affiliate's revenue from the immediately preceding year.

Fair Market Value

The CPUC supports applying identical valuation methods for all types of affiliate transactions. Identical costing methods for assets and services would provide more accurate costing results. The NPRM proposes to require carriers to estimate the fair market value of all non-tariffed affiliate transactions for which prevailing company pricing is not applicable.

As discussed, the CPUC has required Pacific Bell to charge its affiliates the higher of fully distributed cost plus 10% or fair market value for services. Pacific Bell is required to perform market price studies for affiliated services where annual billing exceeds \$100,000. Pacific Bell uses an independent consultant to perform the market price studies.

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Pacific Bell's argument that the proposal to apply the asset transfer rules to services will result in a subsidy from the nonregulated affiliate to ratepayers is incorrect. Affiliates should not be allowed to purchase services from carriers at less than what the affiliate would have to pay at the marketplace.

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
ELLEN S. LeVINE

By: /s/ ELLEN S. LEVINE

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Respectfully submitted,

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EDWARD W. O'NEILL
ELLEN S. LEVINE

By:

Edward W. O'Neill, For

Ellen S. Levine

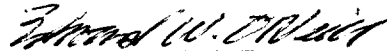
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Attorneys for the People of the
State of California and the
Public Utilities Commission of
the State of California

January 7, 1994

CERTIFICATE OF SERVICE

I, Edward W. O'Neill, hereby certify that on this 7th day of January, 1994, a true and correct copy of the foregoing REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION was mailed first class, postage prepaid to known interested parties.



Edward W. O'Neill